

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

VALVE CORPORATION, a Washington limited  
liability corporation,

Plaintiff,

vs.

SIERRA ENTERTAINMENT, INC. (AKA  
SIERRA ON LINE, INC.), a Delaware  
corporation; VIVENDI UNIVERSAL GAMES,  
INC., a Delaware corporation; and VIVENDI  
UNIVERSAL, S.A., a French foreign  
corporation,

Defendants.

No. 02-CV-01683-TSZ-MAT

DEFENDANTS SIERRA  
ENTERTAINMENT, INC.'S,  
VIVENDI UNIVERSAL GAMES,  
INC.'S AND VIVENDI  
UNIVERSAL, S.A.'S ANSWER  
TO PLAINTIFF'S  
SUPPLEMENTAL COMPLAINT  
FOR BREACH OF CONTRACT

SIERRA ENTERTAINMENT, INC. (AKA  
SIERRA ON LINE, INC.), a Delaware  
corporation; and VIVENDI UNIVERSAL  
GAMES, INC., a Delaware corporation,

Counter-Claimants,

vs.

VALVE CORPORATION, a Washington limited  
liability corporation; GABE NEWELL and LISA  
MENNEN NEWELL, husband and wife, and the  
marital community composed thereof; and  
SCOTT LYNCH and JULIE LYNCH, husband  
and wife, and the marital community composed  
thereof,

Counterclaim Defendants.

*Defendants' Answer to Plaintiff's Supplemental  
Complaint (02-CV-01683-TSZ-MAT)*

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PETERSON, P.S.

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1 Defendants Sierra Entertainment, Inc. ("Sierra"), Vivendi Universal Games,  
2 Inc. ("VUG") and Vivendi Universal, S.A. ("VU") (collectively, "Defendants") hereby  
3 respond as follows to Plaintiff Valve Corporation's ("Valve's") Supplemental Complaint  
4 For Breach Of Contract ("Supplemental Complaint") and to each and every purported cause  
5 of action therein:

6 1. Defendants lack knowledge or information sufficient to respond to the  
7 allegations in Paragraph 1 and, on that basis, deny the allegations in Paragraph 1.

8  
9 **UNPAID ROYALTIES**

10 2. Defendants admit that Sierra and Valve executed a Software Publishing  
11 Agreement in March, 2001 ("SPA"), as well as subsequent amendments thereto, state that  
12 the terms of the SPA are as set forth in the documents comprising the SPA, with  
13 amendments, and deny the remaining allegations in Paragraph 2.

14 3. Defendants deny the allegations in Paragraph 3.

15 4. Defendants deny the allegations in Paragraph 4.

16 5. Defendants deny the allegations in Paragraph 5.

17  
18 **FAILURE TO USE GOOD FAITH COMMERCIAL BEST**  
19 **EFFORTS TO MAXIMIZE SALES OF**  
20 **HALF-LIFE: COUNTER-STRIKE: CONDITION ZERO**

21 6. Defendants state that the characterization of rights under the SPA is a legal  
22 conclusion to which no response is required, and deny the remaining allegations in  
23 Paragraph 6.

24 7. Defendants state that the characterization of the obligations imposed by the  
25 SPA is a legal conclusion to which no response is required, and deny the remaining  
26 allegations in Paragraph 7.

27 8. Defendants deny the allegations in Paragraph 8.

28 9. Defendants deny the allegations in Paragraph 9.

*Defendants' Answer to Plaintiff's Supplemental  
Complaint (02-CV-01683-TSZ-MAT)  
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10. Defendants admit that neither Sierra nor VUG released Counter-Strike: Condition Zero ("CSCZ") in 2003, and deny the remaining allegations in Paragraph 10.

11. Defendants deny the allegations in Paragraph 11.

**FAILURE TO TIMELY ACCEPT THE FINAL  
MILESTONE OF HALF-LIFE: COUNTER-STRIKE:  
CONDITION ZERO**

12. Defendants state that the characterization of the obligations imposed by the SPA is a legal conclusion to which no response is required, and deny the remaining allegations in Paragraph 12.

13. Defendants admit that Valve delivered a build of CSCZ on or about November 14, 2003, and deny the remaining allegations in Paragraph 13.

14. Defendants deny the allegations in Paragraph 14.

**COUNT I: BREACH OF CONTRACT**

15. Defendants incorporate herein their responses to Paragraphs 1-14 above.

16. Defendants deny the allegations in Paragraph 16.

17. Defendants deny the allegations in Paragraph 17.

18. Defendants deny the allegations in Paragraph 18.

19. Defendants deny the allegations in Paragraph 19.

20. Defendants deny the allegations in Paragraph 20.

21. Defendants deny the allegations in Paragraph 21.

**AFFIRMATIVE DEFENSES**

As separate and affirmative defenses to Valve's Supplemental Complaint, and without conceding the burden of proof as to any of these matters, Defendants allege as follows:

**FIRST AFFIRMATIVE DEFENSE**

22. This Court lacks personal jurisdiction over Vivendi Universal, S.A.

**SECOND AFFIRMATIVE DEFENSE**

23. Each and every separate cause of action alleged in Valve's Supplemental Complaint fails to state facts sufficient to constitute a cause of action against Defendants and fails to state a claim upon which relief may be granted.

**THIRD AFFIRMATIVE DEFENSE**

24. Valve's breach of contract count against Vivendi Universal, S.A. fails because Vivendi Universal, S.A. is not a party to the SPA.

**FOURTH AFFIRMATIVE DEFENSE**

25. Some or all of Valve's claims are barred by the doctrine of express or implied waiver.

**FIFTH AFFIRMATIVE DEFENSE**

26. Valve, by its conduct, is estopped from asserting its claims against Defendants.

**SIXTH AFFIRMATIVE DEFENSE**

27. Valve's injuries, if any, were caused in whole or part by the acts of others over which Defendants had no control and for which Defendants are not responsible.

**SEVENTH AFFIRMATIVE DEFENSE**

28. Valve is barred from obtaining equitable relief by the doctrine of unclean hands.

**EIGHTH AFFIRMATIVE DEFENSE**

29. Valve has failed to take reasonable steps to mitigate its damages.

**NINTH AFFIRMATIVE DEFENSE**

30. Some or all of Valve's claims are barred by the doctrine of laches.

**TENTH AFFIRMATIVE DEFENSE**

31. The Supplemental Complaint is barred in whole or in part because Valve obtained the SPA as a result of fraud.

**ELEVENTH AFFIRMATIVE DEFENSE**

32. Valve's breach of contract count is barred by the doctrine of frustration of purpose.

**TWELFTH AFFIRMATIVE DEFENSE**

33. Valve's breach of contract count is barred by mistake of fact.

**THIRTEENTH AFFIRMATIVE DEFENSE**

34. Valve's breach of contract count is barred by failure of consideration.

**FOURTEENTH AFFIRMATIVE DEFENSE**

35. To the extent any contract existed between Sierra and/or VUG and Valve, Valve failed to perform under such contract, as required by the terms of the contract, and that performance on the part of Valve was a condition precedent to the performance of Sierra's and/or VUG's obligation. Sierra and VUG are therefore excused from performance thereunder.

**FIFTEENTH AFFIRMATIVE DEFENSE**

36. Valve's claims are barred by Valve's business compulsion.

**SIXTEENTH AFFIRMATIVE DEFENSE**

37. If Valve has sustained any damages or incurred any expenses, such damages or expenses, if any, were the result of intervening or supervening events, factors, occurrences, or conditions, which were in no way caused by Defendants and for which Defendants are not liable.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

38. Valve may not recover on the claims pleaded in the Supplemental Complaint because the damages sought are too speculative and remote.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

39. Valve may not recover on the claims pleaded in the Supplemental Complaint because the damages sought are barred in whole or in part by the parties' agreements.

WHEREFORE, Defendants hereby pray that this Court:

1. Dismiss Valve's Supplemental Complaint with prejudice, and order that Valve take nothing thereby;
2. Enter an order declaring that Defendants are not liable to Valve for any of the claims that Valve asserted or could have asserted arising out of the facts alleged in the Supplemental Complaint;
3. Award Defendants their attorney's fees and other costs incurred herein; and

1 4. Award Defendants such other and further relief as the Court may deem just and  
2 proper.  
3

4 DATED this 25th day of October, 2004.  
5

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27  
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